IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.713 OF 2005

1. Pradnya Pradeep Kenkare,)
of Bombay, adult,)
Indian Inhabitant, residing at)
12, Chaitali Western Express)
Highway, Bandra (E),)
Mumbai - 400 051.)

2. Kiran Vishnu Kamat,)
of Bombay, adult,)
Indian Inhabitant, residing at)
Sheshgiri, 7, Saraswati Building,)
Jogeshwari (E),)
Mumbai - 400 060.)..Petitioners

Vs.

State of Maharashtra,)
Jogeshwari Police Station, Mumbai.)..Respondent

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Shri Girish Kulkarni, Advocate, for the petitioners.

Shri I.S.Thakur, APP for the State.

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CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.

DATED : 5th MAY, 2005.

JUDGMENT : (Per R.M.S.Khandeparkar, J)

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. The petitioners seek to quash the FIR No.640

of 2004 dated 25th November, 2004 registered at Jogeshwari Police Station, Mumbai, on the ground that the same does not disclose any offence having been committed by the petitioners under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, hereinafter called as "the said Act".

3. It is the case of the petitioners that one Ankush Ramchandra Jadhav was appointed as Assistant Teacher on 12th June, 1989 in Arvind Gandbhir High School run by Jogeshwari Education Society wherein the petitioner No.1 is the Head Mistress since 1999, and prior to that, she was Assistant Head Mistress since 1997. The petitioner No.2 is a Tax Consultant since the year 1992 and is working as Hon. Secretary of the said High School. The services of Ankush Jadhav were terminated in a disciplinary proceedings against him. However, pursuant to the order of the School Tribunal, he was reinstated in the service. After the termination of his services and till he was reinstated in accordance with the order of School Tribunal, the said Jadhav was working in Gyaneshwar Vidyalaya, Wadala, from 13th June, 1990 to 31st October, 1993. When the said fact was revealed to the Management of Jogeshwari Education Society, his services were decided to be terminated by getting order from the

School Tribunal set aside. However, the matter was amicably settled between the parties.

4. The said Ankush Jadhav was appointed in the post of Assistant Teacher and was placed in the trained under graduate pay scale, consequent to which, a dispute arose between the parties which led to the filing of the complaint being C.R.No.1165 of 2003. The petitioner No.1 was initially arrested and later on, he was released on bail. The said Jadhav filed another C.R.No.640 of 2004, i.e. the impugned C.R., against the petitioners under Section 3(1)(x) of the said Act on 25th November, 2004. Hence the present petition.

5. Referring to the impugned FIR, it is sought to be contended on behalf of the petitioners that the same does not disclose any allegation which can constitute an offence either under Section 3(1)(x) or any other provision of the said Act. The expression "MAZLAS KAY THEDGYA ?" referred to in the said FIR does not relate to either of the petitioners but it is stated to have been uttered by one Ashok Raikar, who is not arrayed as the accused in relation to the said FIR. Obviously, therefore, the said expression nowhere discloses any offence by the petitioners. The

learned APP, however, referring to the latter part of the FIR has submitted that the contents thereof clearly disclose intentional insult and intimidation with intent to humiliate the complainant in the public place, more particularly when it is disclosed that the petitioner No.2 had stated that "by lodging false case under Atrocity Act against us, you have really shown your real caste." This expression, according to the learned APP, obviously, discloses insult to the complainant, he being belonging to the scheduled caste, and therefore, there is no case for interference in the FIR.

6. Perusal of the FIR, indeed apparently discloses that the same does not contain any allegation which can constitute an offence under any of the provisions of the said Act against the petitioner No.1. The same not even discloses any attempt on the part of the petitioner No.1 to commit an offence under any of the provisions of the said Act. In fact, it does not disclose the petitioner No.1 having uttered a single word which could cause an intimidation or insult to the complainant on account of being member of the scheduled caste. Hence, the petition as far as the petitioner No.1 is concerned is to be allowed.

7. As regards the petitioner No.2, undoubtedly, there is a specific averment that he had stated that by filing the case under Atrocity Act against them, the complainant had shown his real caste. Referring to the said statement, it is sought to be contended on behalf of the petitioners that if the said statement is read independently and out of context, perhaps it may carry an impression that the reference to the "caste" relates to the caste of the complainant. However, it is quite common amongst Marathi speaking people to use the phrase "tuzi asali jat dakhavilis" for the phrase "to show one's real colour". The word "caste" used in such expression in Marathi language, refers to the character of the person and not to the caste itself. Merely because of the word "caste" is used, and the statement happens to be relating to a person of the scheduled caste, that by itself would not be sufficient to cause such a expression to mean to intimidate a person with reference to his caste. The expression will have to be understood in the context it is used. It is difficult to accept these submissions on behalf of the petitioners. Undoubtedly, the narration of the facts in the complaint discloses a dispute between the parties and in the process, the complainant had filed the

complaint against the petitioners under the said Act and in that context the complainant was told by the petitioner No.2 that the former had revealed his "real cast" by acting in that manner. The statement, prima facie, relates to the cast of the complainant and not merely to his character. Whether the petitioners ment to refer it to the character of the complainant or otherwise, it is a question of fact and would depend upon the evidence to be led in that regard and therefore, it is too premature to consider the said point.

8. However, the learned Advocate is justified in contending that the complaint nowhere discloses that the said expression was used in public view. In fact, the contents of the FIR nowhere disclose that the said expression was communicated to the complainant either in the place accessible to the public or in the presence of the public. It is nowhere stated by the complainant that at the time when the said statement was made by the petitioner No.2, i.e. on 15th August, 2004 at 9.30 a.m., there was any stranger to witness the said incident. The provisions of Section 3(1)(x) of the said Act would be attracted only in case of insulting or intimidating a member of the scheduled caste in any place within a public view. The

expression "in any place within public view" has specific meaning. It does not mean that every allegation made in a public place that itself would amount to an offence under the said Act. The expression "public view" has been prefixed by the preposition "within" which in fact follows the expression "in any place". In other words, the expression relating to the location of the alleged offence is qualified by the requirement of being "within public view". The act of insult or intimidation must be visible and audible to the public in order to constitute such act to be an offence under Section 3(1)(x) of the said Act. In the provision of law comprised under Section 3(1)(x) of the said Act, the word "view" refers to that of ‘public’ but prefixed by the expression "in any place within". Being so, the word "public" not only relates to the location defined by the word "place" but also to the subjects witnessing the incidence of insult or intimidation to the member of scheduled caste or tribe. Therefore, the incidence of insult or intimidation has to occur in a place accessible to and in the presence of the public. The presence of both these ingredients would be absolutely necessary to constitute an offence under the said provision of law. The complaint disclosing absence of both or even any

one of those ingredients would not be sufficient to accuse the person of having committed an offence under Section 3(1)(x) of the said Act.

9. In the facts and circumstances of the case, therefore, the FIR nowhere discloses any offence under the said Act having been committed by either of the petitioners and, therefore, the petitioners are justified in contending that the FIR needs to be quashed and set aside.

10. In the result, therefore, the petition succeeds and the rule is made absolute in terms of prayer clause (a) with no order as to costs.

(R.M.S.KHANDEPARKAR, J)

(P.V.KAKADE, J)